IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 396 OF 2007

SHRI. PUNDALIK K. USKAIKAR ... Petitioner
Versus
SHRI. GAJANAN K. USKAIKAR ... Respondent

Mr. S. G. Desai, Senior Advocate with Mr. A. D. Bhobe, Advocate for the petitioner.

Mr. S. A. Samant, Advocate for the respondent.

Coram:- R. S. MOHITE, J.

Date:- 31st August, 2007

P.C.

This petition impugns an order passed by the Civil Judge, Jr. Division, Panaji granting a temporary injunction restraining the defendant or any person acting on his behalf from dispossessing the plaintiff and/or causing injury to the plaintiff in relation to the suit premises until disposal of the suit. The injunction was granted by the trial Court in a suit filed by the plaintiff for grant of permanent injunction. The plaintiff and the defendant are real brothers. The temporary injunction which was granted, was confirmed by the appellate Court vide its Judgment and Order dated 6.8.07. The defendant, therefore, filed this petition.

2. On a perusal of the Judgment and Order, it appears that there was an earlier litigation between the same parties. The earlier litigation was initiated by the present defendant and in that litigation, he claimed exclusive possession and rights to the suit property. That litigation was contested upto the High Court and it was finally held that the parties were in joint possession. It is upon such finding that the present injunction has been granted.

3. It is sought to be contended that the earlier litigation was of the year 1988 and the finding in that litigation relating to joint possession must relate back to the year 1988. It is further contended that there was an ad interim injunction operating against the present plaintiff throughout the last litigation. The present plaintiff was kept out of the premises in view of the judicial orders which were passed from time to time.

4. Be that as it may, once it has been held that there was a joint possession of the two brothers, then in my view, mere fact that the present plaintiff was kept out by judicial orders will not preclude him from seeking an injunction to protect his joint possession. It is on that footing that the impugned orders have been passed and I find no fault with the said orders. A grievance is, however, made that after passing of the appellate order, taking advantage of the injunction which was granted, the original defendant i.e. the present petitioner was forcibly dipossessed on 10.8.07. Advocate for the respondent, after taking instructions from the respondent who is present in the Court, makes a statement that the respondent has never dispossessed the petitioner. On instructions, he gives an undertaking to this Court that the respondent will not prevent the petitioner from entering into the suit premises and conducting his business therein. The undertaking is accepted.

5. A grievance was also made that some articles belonging to the petitioner were missing from the suit premises. A list of articles is tendered, with a copy to the other side. However, the Advocate for the respondent denies that any articles are missing from the suit premises. The Advocate for the petitioner, therefore, requests that a Commissioner be appointed in regard to the missing articles. Since the allegation pertains to a period after passing of the impugned order, there will be liberty to the petitioner to apply to the lower Court. The petition stands disposed off.

R. S. MOHITE, J.

ssm.